

SEDGWICK COUNTY
BOARD OF ZONING APPEALS
MINUTES

November 1, 1999

The regular meeting of the Sedgwick County Board of Zoning Appeals was held at 3:30 p.m. on November 1, 1999, in the County Commission Room, 3rd Floor, Sedgwick County Courthouse, 525 N. Main, Wichita, Kansas.

The following members were in attendance: Chairman, GARY WILEY, JANA MULLEN, KATHLEEN GIDEON and DENNIS GRUENBACHER present. GRANT TIDEMANN was absent.

The following Planning Department staff members were in attendance: Secretary, DALE MILLER and Assistant Secretary, LISA VERTS, Recording Secretary, ROSE SIMMERING.

The following County Legal staff member was in attendance: MICHELLE DAISE, Assistant County Legal.

WILEY: Call meeting to order. First order of business will be to introduce Dennis Gruenbacher. He is new to the CO-BZA and he is Commissioner, Carolyn McGinn appointment. Do you know these people out there at the table?

GRUENBACHER: Yes.

WILEY: We will start. We do not have any minutes to approve, today.

1. **Case No. CoBZA 3-99, G.D. Rousseau, pursuant to Article V-G.2, Wichita-Sedgwick County Unified Zoning Code, request a reduction of rear yard setback to 5 feet on property zoned "RR" Rural Residential. A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located south of 95th Street and west of Hillside.**

VERTS: Reviews staff report and slides.

BACKGROUND: The applicant wishes to develop the north half of a 9½-acre platted lot as a home site. In doing so, he wishes to place a 50 feet by 80 feet Stran Steel agricultural building at the rear of his property. The applicant is requesting a 20-foot reduction in the 25-foot rear yard building setback as required by the Unified Zoning Code.

Economics, topography, and a well-established hedgerow prevent the applicant from placing the agricultural building in any place other than the rear of the property, behind the hedgerow. Economically, it is not feasible to place the building on the south half of the lot, since this has potential of being sold as a separate parcel. Topographically, much of this property is low-lying wetland with significant drainage problems. Derby Planning Commission is requiring the home site pad to be elevated an additional three feet to account for the drainage problem. There is a well-established hedgerow that runs the full width of the north half of the 9½ acres and continues along the north boundary of the property. These trees stand in excess of 100 feet and add significant ecological diversity and intrinsic value to the site; removing them for the sake of putting up a corrugated steel building would not be ideal. There is a natural clearing in the trees along the applicant's west property line that, with this variance, would allow the construction of a building with minimal tree removal. The property to the west is used for agricultural purposes and does not contain any buildings near their common property line. Placing the building in this location would screen it from the adjoining property except to the west.

ADJACENT ZONING AND LAND USE:

NORTH	“RR“ – Agricultural Uses
SOUTH	“RR“ – Agricultural Uses
EAST	“RR“ – Agricultural Uses
WEST	“RR“ – Agricultural Uses

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as a significant portion of the property is wetland with drainage problems or is covered with a well-established hedgerow, leaving only limited area for development.

ADJACENT PROPERTY: It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the proposed building will be out of site of all property to the north, east, and south. The property to the west is currently cultivated agricultural land.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation may constitute an unnecessary hardship upon the applicant, inasmuch as that without this variance the applicant would be required to remove a significant amount of trees or do major soil infill to bring the wetland area up to a higher elevation. The applicant already is required to infill the home site, per the Derby Planning Commission, at a significant personal cost.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the placement of the proposed building would save ecologically valuable hedgerow and keep the building out of site from surrounding properties.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulation, inasmuch as the rural nature of this area is maintained through the separation of buildings on adjacent property.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to decrease the rear yard setback to 5 feet be GRANTED, subject to the following conditions:

1. The applicant shall obtain all applicable permits including, but not limited to: building, health and zoning.
2. The agricultural building shall be placed on the site as indicated on the submitted site plan, at least 5 feet from the rear property line.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

WILEY: Any questions of staff?

GRUENBACHER: That is farmland to the West, correct?

VERTS: Yes.

WILEY: The 9 -½ acres, is just for the north half or is that both halves?

VERTS: Both.

GRUENBACHER: Can you show us on the red dot, where the building is going to right in the back?

VERTS: The building will be right in that area there.

GRUENBACHER: So it should not hurt.

VERTS: Showing slides.

WILEY: Thank you, Lisa. Would the applicant like to say anything to this case?

G.D. ROUSSEAU, 9919 SOUTH HILLSIDE, HAYSVILLE, KS 67060: This is the platting that was performed by an Engineer for the City of Derby. It states on this platting minimum pad elevation is 1236. If you will notice, she had one picture of this. (Looking through slides). There it is. If you will read every one of those figures on that, and remember that the minimum pad elevation is 1235. The only ones that comply are the ones that are in that northwest corner. I just wanted to make that point. Anybody have questions?

WILEY: Anybody else here to speak in favor of this case? Is there anybody here that would like to speak in opposition to this case? Seeing none, I will confine the comments to the bench.

MULLEN moves and GIDEON seconds that the five conditions set out in Section V-G.6. of the Unified Zoning code as necessary for the granting of the variance have been found to exist and that the variance be granted subject to the conditions set out in the Secretary's report for the variance for 3-99.

MOTION CARRIES UNANIMOUSLY 4-0.

2. **Case No. CoBZA 4-99, Randy Wilson and Rhonda Botts, pursuant to Article V-G.2, Wichita-Sedgwick County Unified Zoning Code, request a variance to allow a power generator tower height of 62 feet on property zoned "SF-20" Single Family Residential. A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located north of 39th Street South and west of Greenwich Road.**

VERTS: Review staff report and slides.

BACKGROUND: The applicants are requesting a height variance for an energy generator on their 5 acres of platted property. The power generator tower selected for this site is 62 feet tall and has a monopole design with three carbon/fiberglass blades totaling 7 feet in diameter. According to the manufacturer, this unit is designed to provide energy for remote power, home and farm lighting, and water pumping. The applicant anticipates using the power generated by this unit to provide the family with lighting and food storage requirements in times of emergency.

As stated in the Unified Zoning Code, the height limit for energy generating structures is 45 feet, "provided that such structure shall not be located in any required setback nor be located closer to any adjacent property than the height of the energy generating structure." The 1992 Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas made exception to this condition:

The Zoning Administrator may grant exceptions to the height limitations, provided all of the following conditions are found to exist:

- (1) The energy generating structure shall not be located closer to an adjacent property line than twice the height of the structure.
- (2) The energy generating unit shall not be located within 200 feet of any existing residential structure on an adjacent property.
- (3) The energy generating unit shall not exceed a height of one hundred (100) feet to the tip of the motor blades.

(Page 14.2)

In combining the City and County Zoning Codes in 1996 this exception was omitted from the Unified Zoning Code, primarily for lack of use of the height exception. If it had been included, this request would have been an Administrative Adjustment and would not have come before the Board of Zoning Appeals. The proposed location of the power generator complies with the aforementioned exception.

The 45-foot height limit is not an adequate height to allow this power generator to operate efficiently. According to the applicant, the additional 17 feet of tower height increases the average wind speed effecting the generator from 14 mph to 16 mph, which will provide a 20-25 percent increase in power output.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-20” – Agricultural Uses
SOUTH	“SF-20” – Single-Family Home
EAST	“SF-20” – Agricultural Uses
WEST	“SF-20” – Agricultural Uses

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as under the previous County Zoning Regulations (1992) this variance request would have been allowed with an Administrative Adjustment on this property. The omission of the exception that would allow the energy generating structure was inadvertent and should not be used against this request.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the wind generator is not located within 200 feet of any existing residential structure on any adjacent property.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation may constitute an unnecessary hardship upon the applicant, inasmuch as sufficient energy efficiency from the power generator could not be attained at this location through the strict enforcement of the 45-foot height limitation.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the use of a sustainable power source reduces the need of public utilities for this household.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulation, inasmuch as the intention of the code was not to limit sustainable self-sufficient energy sources. This variance would have been an allowable exception, handled through an Administrative Adjustment, under the previous County Code.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to allow a power generator height of 62 feet be GRANTED, subject to the following conditions:

4. The increase in height to 62 feet shall apply only to the aforementioned power generator.
5. The applicant shall obtain all applicable permits including, but not limited to, a building permit.
6. Placement of the power generator shall conform to the submitted site plan.
7. The power generator shall be installed within one year or the resolution granting this variance shall become null and void.

GRUENBACHER: Do you know how far the footage is?

VERTS: Approximately 300 feet according to the applicant.

WILEY: Questions for staff? Call on the applicant.

CHRIS DOW, ACTING AS APPLICANT'S AGENT: That does give the example of the total size of the blade, unlike some of the other installations that we are familiar with in the area, which are typically 15 foot and it is quite small and would barely be noticeable. One thing that I would like to bring up is to repeat what Lisa said about the additions of the zoning code that allowed this to administrative review. The lack of request for this let it go away. If everything goes correctly I hope

to have several more requests. I would just like the Commissioners and staff to keep that in mind; there may be future applications and I am actually looking for a precedent, in this particular instance.

WILEY: Any questions? Seeing none. Anybody else that would like to speak in favor of this request or opposition of this request? Seeing none, I will confine the comments to the bench.

GRUENBACHER: The only thing that I would have concerns about this is, if they built one of these to close to somebody's residence. He has to meet the conditions.

WILEY moves and GRUENBACHER seconds that the five conditions set out in Section V-G.6. of the Unified Zoning code as necessary for the granting of the variance have been found to exist and that the variance be granted subject to the conditions set out in the Secretary's report for the variance for 4-99.

MOTION CARRIES UNANIMOUSLY 4-0

WILEY: Dale wants to add something.

MILLER: We have two things. One was to confirm, at least it was Rose's understanding that everybody was agreeable to moving the meetings to Tuesdays, but we weren't sure which one it was.

WILEY: The first one.

DAISE: Monday meeting days has been the only conflict we have with the Board.

GRUENBACHER: I would rather it not is the third Tuesday.

WILEY: First, or second.

SIMMERING: City BZA meets the fourth Tuesday.

WILEY: Staff has no preference.

SIMMERING: We would prefer the first Tuesday. Because, this room is available than at 3:30 p.m.

WILEY: That is fine. I am seeing no objections.

MILLER: We will create a year 2000 calendar for you to approve.

WILEY: So, if there is another case filed yet this year we would be hearing it in December. Monday, at 3:30 p.m. December. The change would be effective in January.

VERTS: Election of officers.

MILLER: Bylaws say that we will do it in May and we did not. We wanted to see who was getting appointed. Probably at the next meeting it would make sense to do that.

WILEY: You want to do that at the next meeting?

GRUENBACHER: We are having a meeting in December no matter what?

VERTS: We have minutes to approve.

SIMMERING: They will be ready, right Dale?

WILEY: We will have a meeting in December. We will have minutes to approve as well as election of officers.

MEETING AJOURNED AT 4:30 p.m.